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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,477	03/26/2004	John F. Cooper	IL-11267	9778
7590	06/14/2006		EXAMINER	
Ann M. Lee Assistant Laboratory Counsel Lawrence Livermore National Laboratory P.O. Box 808, L-703 Livermore, CA 94551			CHUO, TONY SHENG HSIANG	
			ART UNIT	PAPER NUMBER
			1745	
DATE MAILED: 06/14/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/810,477	COOPER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Tony Chuo	1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
  - 4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-5, drawn to a carbon anode, classified in class 44, subclass 607.
  - II. Claims 6-7, drawn to a first use a carbon anode, classified in class 429, subclass 103.
  - III. Claims 8-9, drawn to a second use of a carbon anode, classified in class 429, subclass 103.
  - IV. Claims 10-11, drawn to a third use of a carbon anode, classified in class 429, subclass 122.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the product as claimed can be used in a materially different process of using that product. The carbon anode can be used in a battery.

Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different

process of using that product. See MPEP § 806.05(h). In the instant case, the product as claimed can be used in a materially different process of using that product. The carbon anode can be used in a battery.

Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the product as claimed can be used in a materially different process of using that product. The carbon anode can be used in a capacitor.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Alan Thompson on 5/18/06, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-5. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 recites the limitation "said graphitic materials" in carbon anode. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaschmitter et al (US 5789338) in view of Boes et al (US 5807494). The Kaschmitter reference teaches a process of making a carbon electrode comprising: providing a solution of organic aerogel or xerogel precursors including a phenol, resorcinol, or catechol and formaldehyde; gelling the precursor mixture to form a composite gel; drying the composite gel; and pyrolyzing the composite gel to form an aerogel/carbon composite or a xerogel/carbon composite (See column 8, line 1 to column 9, line 27). In addition, it also teaches a drying step by either supercritical extraction to form an aerogel or air drying to form a xerogel (See column 8, lines 45-52). However, the reference does not expressly teach adding ceramic materials selected from the group consisting of silica, alumino silicates, and ash; glassy materials based on borates,

phosphates, or silicates with alkaline earth or transition metal cations; or carbon materials selected from the group consisting of carbon fibers, carbon paper, carbon rods, carbon fabrics, carbon screens, graphite or highly graphitized carbon structures. The Boes reference does teach adding a carbonaceous component selected from the group consisting of carbon fibers and graphitic carbons and a silica solution to the precursor solution to form a precursor mixture (See column 3, lines 37-42 and column 13, lines 41-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Kaschmitter organic aerogel/xerogel precursors to include a carbonaceous component selected from the group consisting of carbon fibers and graphitic carbons and a silica solution in order to improve the performance properties of the electrode by lowering the dielectric constant.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Mayer et al (US 5358802) reference teaches resorcinol/formaldehyde aerogel foam utilized as a lithium intercalation anode. The Kamath (US 2002/0163772) reference teaches resorcinol-phenol-formaldehyde carbon aerogel utilized as an electrode for an electrochemical cell.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony Chuo whose telephone number is (571) 272-0717. The examiner can normally be reached on M-F, 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TC



PATRICK JOSEPH RYAN  
SUPERVISORY PATENT EXAMINER